UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/51/220
22 July 1996
ENGLISH
ORIGINAL: SPANISH

Fifty-first session
Item 71 of the provisional agenda*

GENERAL AND COMPLETE DISARMAMENT

Letter dated 17 July 1996 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General

I have the honour to request that the attached document, which was issued by the Government of Mexico following the rendering of the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, be circulated as a document of the General Assembly, under item 71 of the provisional agenda.

(Signed) Manuel TELLO
Ambassador
Permanent Representative

* A/51/150.

96-18413 (E) 290796 300796 010896

/...

Annex

Document issued by the Government of Mexico
in Tlatelolco on 9 July 1996

On 8 July 1996, the International Court of Justice, which has its headquarters in The Hague, delivered two advisory opinions in reply to requests addressed to it by the Assembly of the World Health Organization (WHO) and the General Assembly of the United Nations.

In the first request, dated 14 May 1993, the highest international court was asked whether, in view of the health and environmental effects, the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organization. The second request, made during the forty-ninth session of the General Assembly, posed the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

During the sittings held by the International Court of Justice to permit Member States to state their views on the two questions which had been asked, the Government of Mexico, given the importance of the issues raised, decided to make a declaration to the Court, which it did on 3 November 1995. In its declaration, the Government of Mexico affirmed in unequivocal terms its position on the issue, stating as follows:

1. To put peace on a solid foundation, the force of law is necessary, and although law in itself does not guarantee peace, to disregard its principles can make any action to achieve this aim arbitrary and subjective.

2. Mexico reaffirms the absolute nature of the principle contained in the Charter of the United Nations that prohibits the threat or use of force in international relations, which obviously includes the use of nuclear weapons.

3. The threat posed to the survival of mankind by the existence of nuclear weapons grants to the international community as a whole the right to take a position on the illegality of such weapons.

4. Mexico supports the existence of norms of international law that confirm the illegal nature of the use of nuclear weapons under any circumstances whatsoever. The reasons for our opinion include the fact that use of such weapons is contrary to the spirit, letter and purposes of the United Nations and violates the international law applicable in cases of armed conflict, also known as humanitarian law. The indiscriminate effects of nuclear weapons, as evidenced by the attacks on Hiroshima and Nagasaki, provide additional arguments. Indeed, nuclear weapons do not make any distinction between armed forces and the civilian population; nuclear weapons are blind and, because of their probable effects on future generations due to their very nature, may even be considered inevitably genocidal. How is it

possible in these circumstances to deny that the use of nuclear and thermonuclear weapons is contrary to the Charter of the United Nations and is the gravest example of the use of force?

5. We endorse the position taken by the United Nations Human Rights Committee, to the effect that the testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat includes not only the danger that there may be an intentional use of nuclear weapons but also use through human or mechanical error. Furthermore, the very existence and gravity of this threat creates a climate of suspicion between States, which is in itself inimical to the promotion of respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.

The Government of Mexico takes note of the conclusions contained in the advisory opinions and expresses its satisfaction that, for the first time in history, the International Court of Justice has recognized that the threat or use of nuclear weapons is generally contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law, while also recognizing that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

We regret, however, that the Court was unable to conclude whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake. This latter statement by the Court lends support to the argument that when a State is of the view that its vital interests are in danger, it may take such action as it deems appropriate, without regard to the applicable provisions of international law. For Mexico, however, the use of nuclear weapons as a form of reprisal, as well as under any other pretext, is a flagrant violation of the requirement of proportionality.

As stated by Judge Jens Evensen, a former member of the Court, in a press conference at The Hague on 13 April 1989:

> "Reprisals are themselves violations ... (and) the very nature of modern weapons is such that nuclear weapons should never be allowed to be used, never as first use, never as reprisals ... The use of nuclear weapons is the ultimate crime .... We can formulate all kinds of scenarios, but that doesn't change the basic approach that there are certain weapons of warfare that are illegal and criminal and the behaviour of the other party doesn't make them legal".

The legal obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects, which was recognized in the opinion delivered by the Court, confirms the urgent necessity of continuing our collective efforts in this area and supports Mexico's long-held view that such negotiations are not only the responsibility of the nuclear Powers among themselves but of the international community as a whole. In

practical terms, this means that there must be strict compliance with three objectives set out in the Final Document (which was adopted by consensus) of the Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, held last year, which includes: (a) the conclusion of a Comprehensive Nuclear-Test-Ban Treaty no later than 1996; (b) the immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices; and (c) the determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons.

To sum up, while incomplete in its conclusions, the advisory opinion of the Court supports the efforts which Mexico has been making within the United Nations to advance towards the goal of general and complete disarmament, beginning with nuclear disarmament.